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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

OREGON WILD, an Oregon nonprofit corporation; and **WILDEARTH GUARDIANS**, a New Mexico nonprofit corporation,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,
MICHAEL RAMSEY, in his official capacity as Lakeview Ranger District Ranger;
JEANNETTE WILSON, in her official capacity as Silver Lake Ranger District Ranger;
RANDY MOORE, in his official capacity as Chief of the U.S. Forest Service;
and **THOMAS VILSACK**, in his official capacity as Secretary of Agriculture,

Defendants.

Case No. 1:22-cv-01007

JOINT STATUS REPORT

Plaintiffs Oregon Wild and WildEarth Guardians, and Defendants United States Forest Service, Michael Ramsey, Jeannette Wilson, Randy Moore, and Thomas Vilsack hereby submit this Joint Status Report for this case that returns to this Court on remand from the Ninth Circuit.

On August 4, 2023, this Court issued its Opinion and Order resolving the Parties' cross-motions for summary judgment. ECF No. 40. On claim 1, this Court held that the regulation at the center of this case—36 C.F.R. § 220.6(e)(6) ("CE-6")—on its face covers the activities authorized by the Projects at issue and does not contain an acreage limitation. ECF No. 40 at 13. On claim 2, this Court held that Wild's challenge to CE-6 was barred by the statute of limitations, on grounds that the claim had accrued in 1992 when CE-6 was adopted. *Id.* at 17. Accordingly, this Court granted summary judgment in favor of Defendants. *Id.* at 18.

On September 25, 2024, the Ninth Circuit issued a Memorandum Disposition. No. 23-35579, ECF No. 57-1. On claim 1, the Ninth Circuit affirmed, holding that this Court correctly determined that the Forest Service's use of CE-6 to approve the Projects was not arbitrary or capricious so as to violate the APA. Memorandum at 2. On claim 2, the Ninth Circuit vacated this Court's ruling that the claim was time-barred. The Ninth Circuit observed that this Court's determination had relied on *Wind River Mining Corporation v. United States*, 946 F.2d 710, 715–16 (9th Cir. 1991), but that, in light of *Corner Post, Inc. v. Board of Governors of Federal Reserve System*, 603 U.S. 799 (2024), *Wind River* has likely been abrogated. Memorandum at 7. Accordingly, the Ninth Circuit "remand[ed] Wild's second claim to the district court to apply *Corner Post* in the first instance to determine whether this claim is time-barred." *Id.* The Circuit Court mandate issued on November 18, 2024.

On December 9, 2024, Plaintiffs initiated conferral with Defendants to discuss next steps in this case. Plaintiffs have indicated that they wish to file an amended/supplemental complaint

to conform the pleadings to the new Supreme Court authority and the remand instructions from the Ninth Circuit. Defendants have indicated that they oppose leave to amend/supplement, noting concerns that Plaintiffs' proposed amended/supplemental complaint adds not only a new claim but a new plaintiff. Because there is no consent, Plaintiffs will seek this Court's leave to file an amended complaint. *See* Fed. R. Civ. P. 15(a)(2).

In accordance with Local Rule 7-1(e), the Parties will adhere to the following schedule for briefing the motion for leave:

- January 17, 2025:** Deadline for Plaintiffs to File Motion for Leave to File Amended/Supplemental Complaint
- January 31, 2025:** Deadline for Defendants to File Response to Motion for Leave to File Amended/Supplemental Complaint
- February 14, 2025:** Deadline for Plaintiffs to File Reply In Support of Motion for Leave to File Amended/Supplemental Complaint

DATED this 14th day of January, 2025

Respectfully submitted,

s/ Oliver J. H. Stiefel
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